THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO: 23129 of 2005

Dated: 18-03-2006

Between:

M/s. Krishna Kumar Trading Company,

Rep., by its Managing Partner, Bayyana,

Bhavanarayana Street, Vijayawada and six others.

..... PETITIONERS

AND

The Circle Inspector, II Town Police Station,

Kothapeta, Vijayawada and six others.

.....RESPONDENTS

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.23129 of 2005

O R D E R:

This writ petition is filed seeking a declaration that the alleged action of the respondents 1 and 2 i.e., the Circle Inspector, II Town Police Station, Kothapeta, Vijayawada-1 and the Sub Inspector, II Town Police Station, Kothapeta, Vijayawada-1, in dispossessing the

petitioners from the property bearing No.9-64-2, Gulab Street, Vijayawada, basing on the complaint made by the respondents 3 and 4, is arbitrary and illegal.

As can be seen from the material on record, the sixth respondent-bank initiated proceedings under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002, against the petitioners and it appears that the premises in question has already been sold in public auction. It also appears that the respondents 3 and 4 are the auction purchasers. It is also not in dispute that in respect of the said dispute, S.A.No.109 of 2005 is pending before the Debts Recovery Tribunal, Visakhapatnam, and by order dated
10-08-2005 in I.A.No.344 of 2005 in S.A.No.109 of 2005 all further proceedings pursuant to the issuance of the sale certificate by the Authorized Officer have been stayed. While so, the petitioners allege that on a complaint lodged by the respondents 3 and 4, the respondents 1 and 2 have been high handedly interfering with the possession of the petitioners in spite of the order of stay operating in S.A.No.109 of 2005.

This Court, while directing Rule Nisi by order dated
27-10-2005, directed the respondents not to interfere with the possession of the premises in question. In response to the Rule Nisi, the respondents 1 and 2 filed a counter-affidavit in which it is stated that the respondents 3 and 4 made a representation to the Commissioner of Police, Vijayawada, on 27-08-2005 stating that they purchased the premises in question in public auction conducted by the sixth respondent-bank for a valid consideration and the sale certificate was also executed in their favour on 06-08-2005. They also stated in their representation that the vacant possession was delivered to them and thereafter while they were taking steps to get the premises repaired, the erstwhile owners of the premises (petitioners) obstructed them and threatened them with dire consequences, if they proceed with the repair work. On the basis of the said representation, the Commissioner of Police directed the

second respondent to enquire into the matter and submit a report. The second respondent asserts that a detailed enquiry has been conducted into the matter and both the parties were called and were advised to approach a competent Civil Court for redressal of their grievance. It is also stated in the counter-affidavit that since the dispute is of civil nature the respondents 1 and 2 did not initiate any action on the complaint of the respondents 3 and 4. The allegations made by the petitioners that the respondents 1 and 2 had interfered with the possession of the petitioners has been categorically denied and it has been reiterated that no action was taken against the petitioners based on the complaint of the respondents 3 and 4.

In view of what has been stated by the respondents
1 and 2 denying the alleged interference with the possession of the petitioners in respect of the premises in question and in the absence of any other material to contradict the said version of the respondents 1 and 2, no further enquiry is necessary with regard to the allegations against the respondents 1 and 2.

The respondents 3 and 4 filed a separate counter-affidavit explaining that they are the auction purchasers and the possession of the premises in question has already been handed over to them. Similarly the sixth respondent-bank has also filed a counter-affidavit on the same lines stating that the possession was delivered to the respondents 3 and 4 on 06-08-2005 itself by which date no stay was granted.

Be that as it may, this Court will not enquire into such disputed questions of fact and no finding as such can be recorded with regard to the rival claims made by the parties. Since admittedly the matter is pending before the Debts Recovery Tribunal, to which the petitioners as well as the sixth respondent are parties, I deem it appropriate to dispose of the writ petition granting liberty to the parties to make appropriate application before the Tribunal.

Accordingly the writ petition is disposed of making it clear that the respondents 1 and 2 shall not interfere with the possession of the

petitioners without following due process of law and granting liberty to the petitioners as well as the sixth respondent-bank to make appropriate application before the Tribunal in S.A.No.109 of 2005. It is also left open to the respondents 3 and 4 to get themselves impleaded, if they so choose, to the proceedings pending before the Debts Recovery Tribunal. No costs.

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(G.ROHINI, J)

Dated: 18-03-2006

ghn/klp